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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,544	08/19/2003	Chao-Yi Yuh	B429-059	4273
26278	7590	12/28/2004	EXAMINER	
COWAN LIEBOWITZ & LATMAN, P.C.			WALKER, KEITH D	
JOHN J TORRENTE			ART UNIT	PAPER NUMBER
1133 AVENUE OF THE AMERICAS				
NEW YORK, NY 10036			1745	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/643,544	YUH ET AL.	
	Examiner Keith Walker	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 August 2003.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-37 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-37 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 19 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The information disclosure statement filed on 8/19/2003 has been placed in the application file and the information referred to therein has been considered as to the merits.

### ***Drawings***

2. The drawings received on August 19, 2003 are acceptable for examination purposes.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 10 & 30 contain the trademark/trade name "Inconel 718", "Waspaloy" & "Rene-41". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe an alloy metal and, accordingly, the identification/description is indefinite.

5. Claims 5 & 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out or clearly state what claim language, which section of which part is being referred to throughout the description of the claim. Claims 6-11 and 26-31 are also rejected under 35 U.S.C. 112, second paragraph as being dependent on claims 5 & 25 respectively. In order to expedite prosecution, examiner has interpreted the claims to read as stated below in the rejections.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4 & 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,604,331 (Louis).

Regarding claims 1 & 3, Louis describes a separator plate for a fuel cell with sealing flanges formed by folding the edges of the plate back on themselves to form a channel (Abstract). It is well known in the art, and by the applicant's specification that the sealing flange is the wet seal area. Louis further shows a compliant member (Fig. 6) with a body member (53) and a section extending outward of the plane of the body member (51).

Regarding claim 2, as shown in figure 6, the compliant member is located in the wet seal area.

Regarding claims 4 & 13, again figure 6 shows the flat body member (53) with one side of the section is attached to the body member at point (52)

Regarding claims 12, the sections of the compliant members are arranged in rows extending the length and width of the body members (Fig. 1 & 6, Col. 4, II. 35-43).

Regarding claims 14, 15, & 16, one side of the section extends along the length and width of the body member (Fig. 6, Col. 4, II. 35-43).

Regarding claim 17, the rows of sections in the anode and cathode wet seal area are offset from each other though the length of the body member (Fig. 1 & 6, Col. 4, II. 35-43).

#### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5-9, & 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4,604,331 (Louis) in view of US Publication 2002/0022382 (Franklin).

The teachings of Louis, as discussed above, are incorporated herein.

Regarding claim 6, 8, & 9, Louis teaches the use of a spring as the compliant member (Col. 4, Ln. 56). Where the angle of the spring (50) in figure 6 would be

reduced if pressure is applied and such that with enough pressure, the section (52) would lie in the same plane as the body member (53).

Regarding claim 11, Louis further discusses the compliant member being rectangular (Col. 4, Ln. 47).

Louis doesn't directly teach the one side of each of said sections being on the same side of that section as the side that each other one side is on its respective section (claim 5). Nor does he speak to the distance or angle of the body members (claim 7).

Regarding claim 5, Franklin teaches the use of independently acting springs [0100] that are all attached on the same side (Fig. 9L).

The motivation to use the independent springs of Franklin allows each spring to act independently from the adjacent spring of the array and compensate for any variation in the fabrication or assembly of the cell.

Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the spring of Louis with the independent spring assembly of Franklin to compensate for any variation in the fabrication or assembly of the cell, further improving the electrical contact within the cell.

Regarding claim 7, it is considered to be obvious to one skilled in the art at the time the invention was made to fabricate a spring within the instant range for the purpose of manufacturing consistency. If the angle is too large, then the spring could be bent backwards or fold on itself as the fuel cell is assembled. If the angle is too small, then the mere functionality as a spring is lost. As for the length of the sections, it

is held that a modification of size in a component is an obvious matter of design choice. A shorter length sustains more force before full compression, while a longer length requires less force but has a larger range of motion. A change in size is generally recognized as being within the level of ordinary skill in the art. (*In re Rose*, 105 USPQ 237). No apparent criticality is given to the instant ranges.

10. Claims 18- 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Louis in view of Franklin and US Patent 4,689,280 (Gionfriddo).

The teachings of Louis and Franklin, as described above are incorporated herein.

Claim 18, Louis teaches a compliant member with a section extending outwardly (see claim 1); Claim 19, a wet seal area defined by edges folded over on itself (claim 1 & 3); Claim 23, a body member configured to fit within the wet seal area (claim 2); Claim 24, where one side of the section is joined to a flat body member (claim 4);; Claim 26, the body member is a spring (claim 6); Claim 28 & 29, the angle of the spring is reduced as pressure is applied and further the section lies in the same plane as the body member (claim 8 & 9); Claim 31, the body member and section is rectangular (claim 11); Claim 32, sections arranged in rows (claim 12); Claim 33, one side of section is attached to the body member (claim 13); Claim 34 – 36, one side of section extends along length and width of body member (claim 14-16); Claim 37, rows of sections are offset (claim 17). Claim 22, the further compliant member of instant claim, would be all the same features of Louis' compliant member, but for the wet seal area (30) on the opposite side of the separator plate as shown in figure 4.

Louis doesn't speak directly to the fuel cell having a current collector extending into the wet seal area (claim 18), the active area between the flanges (claim 20), the use of a cathode and anode (claim 21), the one side of each of said sections on the same side of that section (claim 25), or the length and angle of the sections from the body member (claim 27).

Regarding claims 18, 20, & 21, Gionfriddo teaches the use of a current collector (56) that extends into the sealing flange (54) in figure 2. Also shown in figure 1 is the assembly of an anode (34) and a cathode (38) that is placed in the active area, as known by those skilled in the art.

The motivation to apply the current collector, anode, cathode assembly with the sealing features of Louis and Franklin's separator plate is to have a complete fuel cell with improved sealing features.

Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the assembly of Gionfriddo with the sealing separator plate to have a fuel cell that has an improved electrical contact system thereby reducing the internal resistance due to shrinking electrodes.

Regarding claim 25, Franklin teaches the use of independently acting springs [0100] that are all attached on the same side (Fig. 9L).

The motivation to use the independent springs of Franklin allows each spring to act independently from the adjacent spring of the array and compensate for any variation in the fabrication or assembly of the cell.

Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the spring of Louis with the independent spring assembly of Franklin to compensate for any variation in the fabrication or assembly of the cell, further improving the electrical contact within the cell.

Regarding claim 27, it is considered to be obvious to one skilled in the art at the time the invention was made to fabricate a spring within the instant range for the purpose of manufacturing consistency. If the angle is too large, then the spring could be bent backwards or fold on itself as the fuel cell is assembled. If the angle is too small, then the mere functionality as a spring is lost. As for the length of the sections, it is held that a modification of size in a component is an obvious matter of design choice. A shorter length sustains more force before full compression, while a longer length requires less force but has a larger range of motion. A change in size is generally recognized as being within the level of ordinary skill in the art. (*In re Rose*, 105 USPQ 237). No apparent criticality is given to the instant ranges.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Walker whose telephone number is 571-272-3458. The examiner can normally be reached on Mon. - Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kdw

Gregg Centelme  
Gregg Centelme  
Primary Examiner

A.U. 1745